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5 Attorney for Defendant  
6 ZACHARY RAMIREZ

7 UNITED STATES DISTRICT COURT

8 CENTRAL DISTRICT OF CALIFORNIA

9 JON NELSON, individually and on  
10 behalf of all others similarly situated,

11 Plaintiff,

12 v.

13 ZACHARY RAMIREZ, an individual,  
14 d/b/a PINEHURST FUNDING, and  
15 JOHN DOE,

16 Defendants

Case No.: 8:22-CV-01563-FWS-DFM

**ZACHARY RAMIREZ'S ANSWER TO  
COMPLAINT**

**[DEMAND FOR JURY TRIAL]**

17 Defendant Zachary Ramirez (“Defendant”) answers Plaintiff Jon Nelson’s  
18 (“Plaintiff”) Class Action Complaint (“Complaint”), filed on August 23, 2022, as  
19 follows.

20 **NATURE OF THE CASE**

21 1. Answering Paragraph 1 of the Complaint, Defendant admits that Plaintiff  
22 purports to bring this action individually and on behalf of all others similarly situated  
23 seeking damages and other remedies. Except as heretofore admitted, Defendant denies  
24 the remaining allegations contained therein.

25 **NATURE OF THE COMPLAINT**

26 2. Answering Paragraph 2 of the Complaint, Defendant denies the allegations  
27 contained therein.

28 3. Answering Paragraph 3 of the Complaint, Defendant denies the allegations

1 contained therein.

2       4. Answering Paragraph 4 of the Complaint, Defendant denies the allegations  
3 contained therein.

4       5. Answering Paragraph 5 of the Complaint, Defendant states that the legal  
5 conclusions contained therein do not require an admission or denial.

6       6. Answering Paragraph 6 of the Complaint, Defendant denies the allegations  
7 contained therein.

8       7. Answering Paragraph 7 of the Complaint, Defendant admits that Plaintiff  
9 seeks damages and other remedies. Except as heretofore admitted, Defendant denies  
10 the remaining allegations contained therein.

### **PARTIES**

12       8. Answering Paragraph 8 of the Complaint, Defendant is without knowledge  
13 or information or belief sufficient to admit or deny the allegations contained therein.

14       9. Answering Paragraph 9 of the Complaint, Defendant admits the allegations  
15 contained therein.

16       10. Answering Paragraph 10 of the Complaint, Defendant states that the  
17 allegations contained therein do not require an admission or denial.

### **JURISDICTION AND VENUE**

19       11. Answering Paragraph 11 of the Complaint, Defendant admits the  
20 allegations contained therein.

21       12. Answering Paragraph 12 of the Complaint, Defendant admits the  
22 allegations contained therein.

23       13. Answering Paragraph 13 of the Complaint, Defendant admits the  
24 allegations contained therein.

### **RESPONSE TO FACTUAL ALLEGATIONS**

26       14. Answering Paragraph 14 of the Complaint, Defendant denies the  
27 allegations contained therein.

28       15. Answering Paragraph 15 of the Complaint, Defendant denies the

1 allegations contained therein.

2 16. Answering Paragraph 16 of the Complaint, Defendant denies the  
3 allegations contained therein.

4 17. Answering Paragraph 17 of the Complaint, Defendant denies the  
5 allegations contained therein.

6 **RESPONSE TO FACTS SPECIFIC TO PLAINTIFF**

7 18. Answering Paragraph 18 of the Complaint, Defendant denies the  
8 allegations contained therein.

9 19. Answering Paragraph 19 of the Complaint, Defendant denies the  
10 allegations contained therein.

11 20. Answering Paragraph 20 of the Complaint, Defendant denies the  
12 allegations contained therein.

13 21. Answering Paragraph 21 of the Complaint, Defendant denies the  
14 allegations contained therein.

15 22. Answering Paragraph 22 of the Complaint, Defendant denies the  
16 allegations contained therein.

17 23. Answering Paragraph 23 of the Complaint, Defendant denies the  
18 allegations contained therein.

19 **RESPONSE TO CLASS ALLEGATIONS**

20 24. Answering Paragraph 24 of the Complaint, Defendant objects to the  
21 definition of the Class and denies that a class action can be maintained in this action.

22 25. Answering Paragraph 25 of the Complaint, Defendant objects to the  
23 definition of the Class and denies that a class action can be maintained in this action.

24 26. Answering Paragraph 26 of the Complaint, Defendant denies the  
25 allegations contained therein.

26 27. Answering Paragraph 27 of the Complaint, Defendant denies the  
27 allegations contained therein.

28 28. Answering Paragraph 28 of the Complaint, Defendant denies the

1 allegations contained therein.

2 29. Answering Paragraph 29 of the Complaint, Defendant denies the  
3 allegations contained therein.

4 30. Answering Paragraph 30 of the Complaint, Defendant denies the  
5 allegations contained therein.

6 31. Answering Paragraph 31 of the Complaint, Defendant denies the  
7 allegations contained therein.

8 **FIRST CAUSE OF ACTION**

9 32. Answering Paragraph 32 of the Complaint, Defendant incorporates by  
10 reference all of the preceding paragraphs of this Answer as if fully stated herein.

11 33. Answering Paragraph 33 of the Complaint, Defendant denies the  
12 allegations contained therein.

13 34. Answering Paragraph 34 of the Complaint, Defendant denies the  
14 allegations contained therein.

15 35. Answering Paragraph 35 of the Complaint, Defendant denies the  
16 allegations contained therein.

17 36. Answering Paragraph 36 of the Complaint, Defendant denies the  
18 allegations contained therein.

19 37. Answering Paragraph 37 of the Complaint, Defendant denies the  
20 allegations contained therein.

21 **SECOND CAUSE OF ACTION**

22 38. Answering Paragraph 38 of the Complaint, Defendant incorporates by  
23 reference all of the preceding paragraphs of this Answer as if fully stated herein.

24 39. Answering Paragraph 39 of the Complaint, Defendant states that the legal  
25 conclusions contained therein do not require an admission or denial.

26 40. Answering Paragraph 40 of the Complaint, Defendant denies the  
27 allegations contained therein.

28 41. Answering Paragraph 41 of the Complaint, Defendant denies the

1 allegations contained therein.

2 42. Answering Paragraph 42 of the Complaint, Defendant denies the  
3 allegations contained therein.

4 43. Answering Paragraph 43 of the Complaint, Defendant denies the  
5 allegations contained therein.

6 **PRAYER FOR RELIEF**

7 Defendant denies that Plaintiff is entitled to a judgment against Defendant or to  
8 any other relief as requested by Plaintiff in the Prayer for Relief.

9 **AFFIRMATIVE DEFENSES**

10 Defendant asserts the following affirmative defenses to the Complaint:

11 **FIRST AFFIRMATIVE DEFENSE**

12 **(Failure to State a Claim)**

13 The Complaint fails to state a claim for which relief can be granted.

14 **SECOND AFFIRMATIVE DEFENSE**

15 **(Acquiescence)**

16 Plaintiff's claims are barred, in whole or in part, by the doctrine of acquiescence.

17 **THIRD AFFIRMATIVE DEFENSE**

18 **(Release)**

19 Plaintiff's claims are barred, in whole or part, by releases, express and implied,  
20 granted or authorized to be granted by Plaintiff.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 **(Waiver)**

23 Plaintiff's claims are barred, in whole or part, by the doctrine of waiver.

24 **FIFTH AFFIRMATIVE DEFENSE**

25 **(Estoppel)**

26 Plaintiffs' claims are barred, in whole or part, by the doctrine of estoppel.

27 **SIXTH AFFIRMATIVE DEFENSE**

28 **(Unclean Hands)**

1 Plaintiff's claims are barred, in whole or part, by the doctrine of unclean hands.

2 **SEVENTH AFFIRMATIVE DEFENSE**

3 **(Failure to Mitigate)**

4 Plaintiff's claims are barred, in whole or part, because Plaintiff has failed to  
5 mitigate his damages.

6 **EIGHTH AFFIRMATIVE DEFENSE**

7 **(Due Process)**

8 Any award of punitive or statutory damages against Defendant would be  
9 unconstitutional as violative of the Due Process Clause of the Fourteenth Amendment to  
10 the United States Constitution, and the Excessive Fines Clause of the Eighth  
11 Amendment to the United States Constitution.

12 **NINTH AFFIRMATIVE DEFENSE**

13 **(No Use of Automatic Telephone Dialing System)**

14 The telephone system used by Defendant does not qualify as an automatic  
15 telephone dialing system as defined by the Telephone Consumer Protection Act.

16 **TENTH AFFIRMATIVE DEFENSE**

17 **(Prior Express Written Consent)**

18 Plaintiff provided prior express written consent to be contacted on his cellular  
19 telephone by Defendant.

20 **ELEVENTH AFFIRMATIVE DEFENSE**

21 **(Ratification)**

22 Plaintiff ratified the conduct alleged in the Complaint by failing to revoke  
23 Plaintiff's prior express written consent and answering the purported telephone calls to  
24 his cellular telephone number, and is therefore barred from recovery against Defendant.

25 **TWELFTH AFFIRMATIVE DEFENSE**

26 **(Failure to Join)**

27 Plaintiff's claims are barred by reason of Plaintiff's failure to join required  
28 parties.

## **RESERVATION OF RIGHTS AND DEFENSES**

Defendant reserves the right to raise additional defenses as Defendant becomes aware of them.

## **DEFENDANT'S PRAYER FOR RELIEF**

WHEREFORE, Defendant prays for judgment as follows:

(a) That Plaintiff take nothing by way of the Complaint and the Court dismiss the Complaint with prejudice;

(b) That the Court enter judgment that Defendant is the prevailing party in this action;

(c) That the Court award Defendant all costs, expenses and attorneys' fees that Defendant is entitled to under federal law; and

(d) That the Court award any and all other relief to which Defendant may be entitled.

## **DEMAND FOR TRIAL BY JURY**

Pursuant to Local Rule 38-1, Defendant hereby demands a trial by jury on all claims so triable.

Dated: September 8, 2022

## LAW OFFICES OF SETH W. WIENER

Seth Weir

By: \_\_\_\_\_  
Seth W. Wiener  
Attorney for Defendant  
**ZACHARY RAMIREZ**

**CERTIFICATE OF SERVICE**

I hereby certify that on September 8, 2022, I served the foregoing through the Court's CM/ECF system, which sent notice to all counsel of record.

Seth Weir

By: SETH W. WIENER